

### **REJECTION UNDER 35 USC § 103(a)**

In the Office Action, the Examiner rejected claims 1-17, 19-23 and 25-28 under 35 USC § 103(a) as being unpatentable over alSafadi et al., US Patent No. 6,467,088, in view of Weidner, US Patent No. 6,556,686. This rejection is fully traversed below. Claims 29-33 were not rejected.

alSafadi et al. describes a reconfiguration manager implemented on a computer or other data processing device. The reconfiguration manager controls the reconfiguration of software or other components of an electronic device such as a computer, personal digital assistant (PDA), set-top box, television, etc. On page 3 of the Office Action, the Examiner admits that alSafadi et al. does not teach that its electronic device can be a hearing aid device. The Examiner relies on Weidner to teach a programmable hearing aid device. Weidner describes a programmable hearing aid device in which keys are utilized to enable or disable functions or features of the hearing aid device.

In contrast, claim 1 pertains to a method for upgrading a hearing aid device. Among other things, claim 1 recites “reading device information from the hearing aid device, the device information including at least a model indication and a serial number” (claim 1, lines 3-4). The device information can then be sent to a hearing aid upgrade server via a network. Then, the method of claim 1 recites “subsequently receiving upgrade data from the hearing aid upgrade server via the network, the upgrade data being obtained at the hearing aid upgrade server based on the device information” (claim 1, lines 6-8).

alSafadi et al. has nothing to do with a hearing aid device or upgrade of a hearing aid device. Hence, alSafadi et al. does not teach or suggest device information from a hearing aid device that includes at least a model indication and a serial number. Moreover, alSafadi et al. does not teach or suggest receiving upgrade data from the hearing aid upgrade server via the network, where the upgrade data is obtained at the hearing aid upgrade server based on the device information.

On page 2 of the Office Action, the Examiner points to column 4, lines 14-48 of Weidner as being relevant to the device information. According to Weidner, a software key is used to protect against unauthorized usage. The software key can be made such that it is validated by an appropriate device identification of a hearing aid device. In contrast, according to the invention, device information is utilized to obtain update data from a hearing aid upgrade server based on the device information. **Weidner is not utilizing the unique device identification mentioned**

therein for upgrade of a hearing aid device. Instead, Weidner uses the unique device identification merely with reference to a software key so as to prevent subsequent transfer of the software key to other hearing aid devices.

Additionally, it should be noted that the combination of alSafadi et al. with Weidner is inappropriate. alSafadi et al. pertains to a configuration manager for an electronic device, and has nothing to do with the upgrading of a hearing aid device. Although a hearing aid device is an electronic device, there is nothing in alSafadi et al. that teaches or suggests to one of ordinary skill in the art that the reconfiguration manager described in alSafadi et al. could be utilized to upgrade a hearing aid device. On the other hand, Weidner does pertain to a programmable hearing aid. However, there is nothing in Weidner that teaches or suggests that it could be utilized with the reconfiguration manager of alSafadi et al. At best, if the programming device 11 of Weidner could be somehow upgraded by the techniques of alSafadi et al., such upgrading, if possible, would however be a software upgrade to the programming device. In contrast, claim 1 is upgrading the hearing aid itself, not a programming device. Moreover, there is no adequate motivation of record that would lead one skilled in the art to combine these references as the Examiner proposes.

Accordingly, it is submitted that claim 1 is patentably distinct from alSafadi et al., alone or in combination with Weidner.

Claim 10 also pertains to a method for upgrading a hearing aid device. The limitations discussed above regarding claim 1 are somewhat similar to those provided in claim 10. Hence, for at least similar reasons to those noted above with respect to claim 1, it is submitted that claim 10 is patentably distinct from alSafadi et al., alone or in combination with Weidner.

Claim 22 pertains to a method for providing software to upgrade a hearing aid device from a remote hearing aid server. Claim 22 recites that the upgrading of the hearing aid device is performed after comparing the returned device information with the device information received from the hearing aid device. The Examiner admits on page 7 of the previous Office Action that alSafadi et al. and Weidner fail to teach certain features recited in claim 22.

Claim 22, however, concerns operation that are performed to determine whether the upgraded software received or to be received from a remote hearing aid server is for use by a hearing aid device. Neither alSafadi et al. nor Weidner teaches or suggests any means to verify that the upgraded software received or to be received from a remote hearing aid server is for use by a hearing aid device that a requesting device requests to upgrade. Further, there is nothing in

alSafadi et al. or Weidner that teaches or suggests “sending returned device information to the requesting device” or “comparing the returned device information with the device information for the hearing aid device available from said receiving of the device information” or “thereafter upgrading the hearing aid device in accordance with the appropriate upgraded software provided to the requesting device when said comparing indicates that the returned device information matches the device information for the hearing aid device.” Therefore, it is submitted that claim 22 is patentably distinct from alSafadi et al. and Weidner.

Additionally, claims 29-31 are computer readable medium format claims. Claims 29-31 recited limitations similar to other claims noted above and are therefore also patentably distinct from alSafadi et al. and Weidner for similar reasons.

Therefore, it is submitted that claims 1, 10, 22, and 29-32 are patentably distinct from alSafadi et al. alone or in combination with Weidner. In addition, it is submitted that dependent claims 2-9, 11-17, 19-21, 23, 25-28 and 33 are also patentably distinct for at least the same reasons as their corresponding independent claim. The additional limitations recited in the independent claims or the dependent claims are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from any one or more of alSafadi et al. and Weidner. Thus, it is respectfully requested that the Examiner withdraw the rejection under 35 USC § 103(a).

## SUMMARY

It is submitted that claims 1-17, 19-23 and 25-33 are patentably distinct from the cited references. Reconsideration of the application and an early notice of allowance are earnestly solicited.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. AUD1P009).

Respectfully submitted,  
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